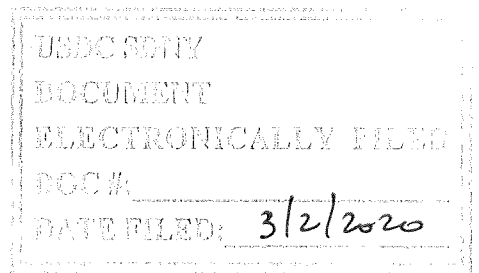


UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



ALLAH JUSTICE TURNER,

Plaintiff,

-against-

SGT. CIMORELLI, Shield No. 142;
SHERIFF CARL DUBOIS, Shield No. 001;
SERGEANT V. MURPHY, Shield No. 062;
CORRECTIONAL OFFICER S. MOORE,
Shield No. 426; CORRECTIONAL OFFICER
LAKE, Shield No. 546; MEDICAL STAFF
JANE AND JOHN DOE 1-50; SERGEANT
R. POTTER, Shield No. 059; SERGEANT
KEITH KISZKA, Shield No. 134,

Defendants.

20-CV-0643 (NSR)

ORDER TO AMEND

NELSON S. ROMÁN, United States District Judge:

Plaintiff, currently incarcerated at Orange County Jail, brings this *pro se* action under 42 U.S.C. § 1983. He alleges, among other things, that certain Defendants used excessive force against him. By order dated February 11, 2020, the Court granted Plaintiff's request to proceed without prepayment of fees, that is, *in forma pauperis* (IFP).¹

STANDARD OF REVIEW

The Court must dismiss a complaint, or portion thereof, that is frivolous or malicious, fails to state a claim upon which relief may be granted, or seeks monetary relief from a defendant who is immune from such relief. 28 U.S.C. §§ 1915(e)(2)(B), 1915A(b); *see Abbas v. Dixon*, 480 F.3d 636, 639 (2d Cir. 2007). The Court must also dismiss a complaint when the Court lacks subject matter jurisdiction. *See* Fed. R. Civ. P. 12(h)(3). While the law mandates dismissal on any

¹ Prisoners are not exempt from paying the full filing fee even when they have been granted permission to proceed *in forma pauperis*. *See* 28 U.S.C. § 1915(b)(1).

of these grounds, the Court is obliged to construe *pro se* pleadings liberally, *Harris v. Mills*, 572 F.3d 66, 72 (2d Cir. 2009), and interpret them to raise the “strongest [claims] that they *suggest*,” *Triestman v. Fed. Bureau of Prisons*, 470 F.3d 471, 474 (2d Cir. 2006) (internal quotation marks and citations omitted) (emphasis in original).

DISCUSSION

Plaintiff names “John and Jane Doe Medical Staff 1-50” as defendants in the caption of the complaint. Plaintiff fails, however, to plead any facts in the body of the complaint about what John and Jane Doe Medical Staff did or failed to do that violated Plaintiff’s rights. *See Spavone v. N.Y. State Dep’t of Corr. Serv.*, 719 F.3d 127, 135 (2d Cir. 2013) (holding that a plaintiff must allege facts showing the defendant’s direct and personal involvement in the alleged constitutional deprivation). Plaintiff thus fails to state a claim on which relief can be granted against John and Jane Doe Medical Staff. 28 U.S.C. § 1915(e)(2)(B)(ii).

District courts generally grant a *pro se* plaintiff an opportunity to amend a complaint to cure its defects unless it would be futile to do so. *See Hill v. Curcione*, 657 F.3d 116, 123–24 (2d Cir. 2011); *Salahuddin v. Cuomo*, 861 F.2d 40, 42 (2d Cir. 1988). The Court grants Plaintiff leave to amend the complaint, within 30 days of the date of this order, to replead his claims against John and Jane Doe Medical Staff.

If Plaintiff chooses to file an amended complaint to replead his claims against John and Jane Doe Medical Staff, he must name John and Jane Doe Medical Staff in the caption of the amended complaint and plead facts in the body of the amended complaint about what John and Jane Doe Medical Staff did or failed to do that violated Plaintiff’s rights. Plaintiff must also plead facts that would allow the John or Jane Doe defendants to be identified, such as the date and time of the incident, the location of the incident, a description of the defendants, and facts

about what happened.² Moreover, because Plaintiff's amended complaint will completely replace, not supplement, the original complaint, any other facts or claims that Plaintiff wishes to maintain must also be repleaded in the amended complaint.

No summons will issue at this time. If Plaintiff files an amended complaint as directed, the Court will screen the amended complaint under 28 U.S.C. § 1915(e)(2)(B)(ii). If Plaintiff fails to file an amended complaint within 30 days, then the original complaint will be deemed the operative complaint, and the Court will dismiss Plaintiff's claims in the complaint against John and Jane Doe Medical Staff for failure to state a claim on which relief can be granted.³

CONCLUSION

The Clerk of Court is directed to mail a copy of this order to Plaintiff and note service on the docket. Plaintiff is granted leave to file an amended complaint that complies with the standards set forth above. Plaintiff must submit the amended complaint to this Court's Pro Se Intake Unit within 30 days of the date of this order, caption the document as an "Amended Complaint," and label the document with docket number 20-CV-0643 (NSR). For Plaintiff's convenience, an amended complaint form is attached to this order. No summons will issue at this time.

If Plaintiff does not file an amended complaint within 30 days, the original complaint will be deemed the operative complaint, and the Court will dismiss Plaintiff's claims against John

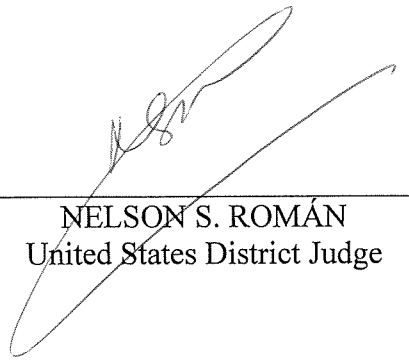
² For example, a defendant may be identified as: "Correction Officer John Doe #1 on duty August 31, 2019, at Sullivan Correctional Facility's medical clinic, during the 7-3 p.m. shift."

³ Plaintiff may also notify the Court within this 30-day period that he is choosing not to file an amended complaint, and the Court will then deem the original complaint the operative pleading and dismiss Plaintiff's claims in the original complaint against John and Jane Doe Medical Staff.

and Jane Doe Medical Staff for failure to state a claim on which relief can be granted. *See* 28 U.S.C. § 1915(e)(2)(B)(ii).

SO ORDERED.

Dated: March 2, 2020
White Plains, New York



NELSON S. ROMÁN
United States District Judge

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Write the full name of each plaintiff.

-against-

____ CV ____
(Include case number if one has been assigned)

**AMENDED
COMPLAINT**
(Prisoner)

Do you want a jury trial?
☐ Yes ☐ No

Write the full name of each defendant. If you cannot fit the names of all of the defendants in the space provided, please write "see attached" in the space above and attach an additional sheet of paper with the full list of names. The names listed above must be identical to those contained in Section IV.

NOTICE

The public can access electronic court files. For privacy and security reasons, papers filed with the court should therefore *not* contain: an individual's full social security number or full birth date; the full name of a person known to be a minor; or a complete financial account number. A filing may include *only*: the last four digits of a social security number; the year of an individual's birth; a minor's initials; and the last four digits of a financial account number. See Federal Rule of Civil Procedure 5.2.

I. LEGAL BASIS FOR CLAIM

State below the federal legal basis for your claim, if known. This form is designed primarily for prisoners challenging the constitutionality of their conditions of confinement; those claims are often brought under 42 U.S.C. § 1983 (against state, county, or municipal defendants) or in a "*Bivens*" action (against federal defendants).

☐ Violation of my federal constitutional rights

☐ Other: _____

II. PLAINTIFF INFORMATION

Each plaintiff must provide the following information. Attach additional pages if necessary.

First Name

Middle Initial

Last Name

State any other names (or different forms of your name) you have ever used, including any name you have used in previously filing a lawsuit.

Prisoner ID # (if you have previously been in another agency's custody, please specify each agency and the ID number (such as your DIN or NYSID) under which you were held)

Current Place of Detention

Institutional Address

County, City

State

Zip Code

III. PRISONER STATUS

Indicate below whether you are a prisoner or other confined person:

☐ Pretrial detainee

☐ Civilly committed detainee

☐ Immigration detainee

☐ Convicted and sentenced prisoner

☐ Other: _____

IV. DEFENDANT INFORMATION

To the best of your ability, provide the following information for each defendant. If the correct information is not provided, it could delay or prevent service of the complaint on the defendant. Make sure that the defendants listed below are identical to those listed in the caption. Attach additional pages as necessary.

Defendant 1:

First Name	Last Name	Shield #
Current Job Title (or other identifying information)		
Current Work Address		
County, City	State	Zip Code

Defendant 2:

First Name	Last Name	Shield #
Current Job Title (or other identifying information)		
Current Work Address		
County, City	State	Zip Code

Defendant 3:

First Name	Last Name	Shield #
Current Job Title (or other identifying information)		
Current Work Address		
County, City	State	Zip Code

Defendant 4:

First Name	Last Name	Shield #
Current Job Title (or other identifying information)		
Current Work Address		
County, City	State	Zip Code

V. STATEMENT OF CLAIM

Place(s) of occurrence: _____

Date(s) of occurrence: _____

FACTS:

State here briefly the FACTS that support your case. Describe what happened, how you were harmed, and how each defendant was personally involved in the alleged wrongful actions. Attach additional pages as necessary.

This image shows a single sheet of white paper with horizontal ruling lines. The lines are evenly spaced and run across the width of the page. There are no margins, text, or other markings on the paper.

VII. PLAINTIFF'S CERTIFICATION AND WARNINGS

By signing below, I certify to the best of my knowledge, information, and belief that: (1) the complaint is not being presented for an improper purpose (such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation); (2) the claims are supported by existing law or by a nonfrivolous argument to change existing law; (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and (4) the complaint otherwise complies with the requirements of Federal Rule of Civil Procedure 11.

I understand that if I file three or more cases while I am a prisoner that are dismissed as frivolous, malicious, or for failure to state a claim, I may be denied *in forma pauperis* status in future cases.

I also understand that prisoners must exhaust administrative procedures before filing an action in federal court about prison conditions, 42 U.S.C. § 1997e(a), and that my case may be dismissed if I have not exhausted administrative remedies as required.

I agree to provide the Clerk's Office with any changes to my address. I understand that my failure to keep a current address on file with the Clerk's Office may result in the dismissal of my case.

Each Plaintiff must sign and date the complaint. Attach additional pages if necessary. If seeking to proceed without prepayment of fees, each plaintiff must also submit an IFP application.

Dated		Plaintiff's Signature	
First Name	Middle Initial	Last Name	
Prison Address			
County, City	State	Zip Code	

Date on which I am delivering this complaint to prison authorities for mailing: _____